DOCUMENT RESUME

ED 222 987 EA 015 141

TITLE	School Discipline: Preventing Problems. School Management Handbook Number 1.
INSTITUTION	National Association of Elementary School Principals, Arlington, V
PUB DATE	Sep 81
NOTE	29p.; For related documents, see EA 015 142-146.
AVAILABLE FROM	Publications, National Association of Elementary School Principals, 1801 North Moore Street, Arlington, VA 22209 (Handbook Nos. 1-6 available only as a set: $50.00, non-members; $30.00, members; binder included).
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	Administrator Guides; Administrator Role; Civil Rights; *Classroom Techniques; Court Litigation; *Discipline; *Discipline Policy; Discipline Problems; Dress Codes; Elementary Education; Parent Role; Prevention; Student Behavior; *Student Rights; *Suspension; Teacher Role
IDENTIFIERS	*Assertive Discipline

ABSTRACT

This part of the School Management Handbook provides the elementary school administrator with a quick overview of several aspects of school discipline. The first section introduces concepts central to developing effective school discipline policy, including the value of focusing on preventing rather than simply punishing misbehavior; prioritization of disciplinary aims; the roles of the principal and the teacher; the place of student codes and handbooks; and the roles of parents and the community. Section 2 discusses assertive discipline, a technique for establishing good student behavior habits. Inschool suspension is the topic of section 3. The fourth and last section discusses students' constitutional rights in the areas of expression, dress, religion, publications, and freedom from prior restraint, and notes relevant court decisions. Specific recommendations for disciplinary policy accompany each section of the document. (PGD)

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ED222987

Number 1 September 1981

SCHOOL MANAGEMENT HANDBOOK

School Discipline: Preventing Problems

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EA 015 111

Published by the National Association of Elementary School Principals
1801 North Moore Street, Arlington, Virginia 22209

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School Management Handbook is published bimonthly by the National Association of Elementary School Principals (NAESP). Subscription price, $30 for NAESP members; $35 for nonmembers.

PREFACE

With this issue, NAESP embarks on a new publishing venture: the *School Management Handbook*, a loose-leaf reference service designed to provide practical, up-to-date guidance for school managers on critical issues in school governance. Each issue of the *Handbook* will report relevant research, program ideas, court decisions, and legislative mandates and will offer specific guidelines and recommendations for the practitioner, along with suggestions of where to look for further information.

Researched and prepared by an educational consultant, the material in *School Management Handbook* is carefully critiqued by a review panel, whose names are listed on the previous page. Their help has been invaluable in ensuring that the *Handbook* is clear, accurate, and, above all, useful to school principals and other administrators.

As a *Handbook* subscriber, you will receive six issues, published bimonthly, plus a storage binder, year-end index, and update sheets as required to reflect new findings and changes in the law. Projected issues for 1981-82 are:

1. School Discipline: Preventing Problems
2. School Discipline: Special Issues
3. Diagnosis and Planning for the Handicapped Child
4. Implementing Special Education
5. The New Technology in Education
6. Negotiating and Administering Contracts

We hope you will find the *School Management Handbook* a valuable reference tool--one you will keep at hand to check regularly for guidelines and suggestions to help you solve the kinds of problems you face daily as a school manager.

Samuel G. Sava
Executive Director
National Association of
Elementary School Principals

1.1 SCHOOL DISCIPLINE: FIRST STEPS

SUMMARY

The topic of school discipline covers a wide range of concerns, from maintaining a suitable classroom environment to preventing and punishing what would be criminal offenses elsewhere. Effective programs most often use an integrated, preventive approach tied to many aspects of school life, rather than merely responding to particular problems as they arise. The most appropriate discipline goals focus not on eliminating misbehavior, but on fostering positive attitudes that promote both learning and a peaceful school in which to learn.

ASPECTS OF SCHOOL DISCIPLINE

Educators' disciplinary interventions fall into three overlapping categories:

1. *Efforts to prevent or deter relatively serious misbehavior, such as vandalism, theft, and assault.*
   These problems attract a great deal of publicity. They are a main reason for limited public confidence in the schools. Still, offenses that threaten people and property are rare in all but a small minority of schools. Even the disciplinary problems leading to serious sanctions--corporal punishment, suspension, and expulsion--much more often involve nonviolent offenses such as truancy, insubordination, and the like.
2. *Procedures to control student behavior before any particular offense occurs.*
   This category of intervention is most likely to show prompt, positive results. It includes approaches as diverse as dissemination of clear rules and standards; parent conferences; "behavior contracts" with students; handbooks written by and for students; several approaches to teacher education; and the introduction of promising techniques for classroom management.
3. *Changes in the overall school environment designed to reduce discipline problems among students generally.*
   This is a promising long-term approach that many educators overlook. Possibilities include innovations in curriculum; the broadening of extracurricular activities to help a majority of students develop and pursue positive interests; redirection of student government to bring about student-directed change; and creative use of peer pressure.

First Steps--1.2

Pressures of the moment often require school officials to spend much time and energy on the more serious offenses, and hence on the worst offenders. But research shows that more positive approaches to behavior, taken with the school as a whole in mind, are more likely to succeed with more students. In a word, students will not show consistently good behavior unless they want to. The problem lies in helping them want to.

PRIORITIES IN SCHOOL DISCIPLINE

Every school finds it necessary to use punitive measures occasionally, despite agreement that more positive approaches are generally more effective and therefore preferable. Experience shows that even judicious use of punishment, especially corporal punishment, suspension, or expulsion, can bring problems upon the school in the form of outraged parents, bad publicity, and lawsuits. The guidelines in this section of the Handbook can help to avoid such problems. Once school officials have decided that punishment is appropriate in a particular case, it should be imposed in accordance with the law and with due regard for the importance of good relations with parents and the community. At the same time, the need to impose punitive sanctions routinely may indicate that school officials ought to rethink their disciplinary policies.

In order of priority, the aims of school discipline are, first, to promote an atmosphere conducive to learning and, second, to make disruptive behavior undesirable to students. Punishment is properly a last resort; its frequent use suggests failure in attaining the first two goals. Sometimes the punishment itself can serve to further other goals, as with programs using in-school suspension. (See section 1.3.) But as a rule, positive steps taken before the offense occurs will be much more effective than punishment afterwards.

THE ROLE OF THE PRINCIPAL

Researchers have observed that good discipline tends to appear throughout entire schools, not just individual classrooms. Yet many of the most successful schools are located in neighborhoods long associated with school disciplinary problems. Many research groups credit these successes to principals and their individual styles of good management. For example, one large study on "school crime" conducted by the National Institute of Education concluded, "We were constantly impressed with the fact that the 'turn-around' point in schools which were once considered to have been unsafe and out of control was the arrival of a new principal....The leadership style of the principal appears to be a critical factor in itself in differentiating safe schools from those having trouble."

The studies have been less clear in establishing what factors make some principals more successful than others at maintaining discipline. The following have emerged as

possibilities:

1. The effective principal is rarely a strict "disciplinarian." More often, orderly schools have principals who are liked and respected but not feared.
2. Respect for the principal comes in part from his or her willingness to impose punishment when necessary. But in doing so the principal must be fair, firm, and consistent. Punishment is far more effective when students are confident that it will not be arbitrarily or unfairly applied.
3. What the principal does seems less important than how he or she does it. A broad range of approaches seem to work well, in the hands of the right people.
4. Students and teachers describing effective principals often refer to personality characteristics rather than particular methods or programs: "You get the feeling he cares about every kid in the school," or, "When you're sent to the office, it's like you let her down."
5. The principal's relationship with teachers in disciplinary matters is especially important. Successful principals are often cited as involving teachers in the development of discipline programs, as compared with those who merely hand down instructions to be implemented.

TEACHERS

Day-to-day school discipline depends more on teachers than on other adults in the building, simply because teachers have the greatest contact with students. Thus it is practically impossible for a discipline program to succeed unless teachers give it their wholehearted support. The best way to assure teacher cooperation is to involve teachers in formulating a discipline program from the outset. Teachers have to implement much of the program themselves and have certain legitimate requirements of their own. On the other hand, involving every teacher at every stage of development is likely to be awkward. One workable compromise is a "discipline policy committee" consisting of the principal, assistant principal(s), and representative teachers. It may be useful to include a union representative in the group to anticipate any objections from that quarter later on.

The committee is responsible for formulating disciplinary policy, including rules, sanctions, procedures, and appeals. The committee can also recommend changes in curriculum and in extracurricular activities that may promote more positive student attitudes toward school generally. When the committee has finished its work, its findings should circulate in draft form to all teachers for comment. No teacher should be asked to implement a policy until he or she has the opportunity to make input. Teacher's comments, moreover, must be considered seriously. A handful of disgruntled teachers may be enough

to undermine even the most carefully thought-out policy.

Meaningful teacher education should be considered as a part of every discipline program. Ordinarily, one or two half-day workshops a year are insufficient, especially in a school with chronic discipline problems. Research shows that proper education of teachers can bring about major improvements in almost any school. The training can be expensive in terms of released time, and so district offices are sometimes unwilling to provide it. But it can lead to substantial savings in the long run, both in money and in educators' peace of mind.

STUDENT CODES AND HANDBOOKS

In order to obey the rules, every student must first understand exactly what the rules are. Sometimes school officials attempt to enforce rules that students did not know existed. Much more often, students plead ignorance as an excuse even when the challenged behavior is obviously contrary to good order. The promulgation of clear rules eliminates any questions as to this defense and makes the imposition of sanctions fairer for all concerned.

A student code of rules should specify the following:

1. Behaviors that are prohibited
2. For each such behavior, the maximum penalties for first, second, and subsequent offenses
3. Procedures that the school will follow in imposing each penalty (For the rules of due process imposed by law, see section 2.2)
4. The student's right to appeal the penalty, if any, and the procedures for doing so.

Many schools have found it useful to incorporate the code of rules in a student handbook. The handbook can also contain a variety of material designed to help students gain a positive attitude toward the school, and other useful items as well. For example:

1. Student rights
2. The kinds of information contained in student records, its purposes, and the people who have access to it
3. School policies on searches of students' lockers, handbags, pockets, etc.
4. Academic and grading policies
5. Procedures for obtaining letters of recommendation, transcripts, and other documents from the school
6. Procedures by which students can bring complaints against other students

or, in appropriate circumstances, against staff

7. Suggestions for proper dress in the absence of rules
8. School policies toward students who are married or pregnant.

Student handbooks are most effective when students contribute to the contents. For example, a student committee can review the policies and procedures, including the code of rules, and recommend changes. (Often students seek to stiffen some rules.) Any material not of an official nature may be written by students in the first place.

Every student must receive a copy of the handbook. Some schools require each student to sign a receipt, so there can be no question later on as to whether the student was informed of the rules. With younger students, it may be appropriate for the teacher to go over the rules with them to be sure they understand each one.

The student government can help to prepare and distribute the handbook and can also be of assistance in implementing the policies it describes. But to have the respect of the student body, the student government must be properly elected and fairly representative. Student governments under the control of a small faction may be seen as either agents or enemies of the school administration, and hence will be less effective in influencing student behavior.

PARENTS AND THE COMMUNITY

Surveys show that school discipline is a matter of intense interest to parents and to the community at large. Along with academic standards, it is one of the main public concerns about education. Students, moreover, acquire many of their behavior patterns at home and elsewhere in the community. It is relatively easy for parents, in particular, to undermine the school's best efforts toward discipline. For all of these reasons, it is usually wise to involve parents and others in developing and implementing discipline programs.

Parent groups are generally supportive of efforts to improve school discipline. Many parents have practical suggestions--some know the problems well--and will often provide useful services to the school at no cost. It is important, however, to include parent groups early in the development process, before plans are firm. If parents help to invent the system, they will support it all the more vigorously. Consultation with parents can take time, and a certain amount of wrangling may be inevitable. But the outcome in support is usually worth the trouble. Individual parents need to be told early whenever their children begin to encounter disciplinary trouble in school. Parents rightly object when they hear nothing until the child is suspended. Ordinarily, the best forum is a meeting among the principal, classroom teacher, student, and parents--both parents when

possible, even if they are not living together. The meeting should conclude with specific courses of action for parents and student and a clear understanding of the consequences should the unwanted behavior recur.

Principals also need a good working relationship with the police. Together, they should establish guidelines and procedures to cover any situation in which the police are likely to enter school property. It is especially important to reach consensus on when and in what ways the police shall enter uninvited--to make drug searches, for example, or to answer complaints that bypass the principal's office. Students must understand that the principal, not the police department, is in charge of what happens in the school.

Local homeowners' and tenants' associations may also be persuaded to take an interest in school discipline. The boisterousness of young people sometimes makes local residents, especially older people, apprehensive of their safety. Involving local people in the formulation of discipline plans can help to allay these fears, and residents may welcome the opportunity to take an active role. Simply giving nearby residents a phone number to call if they notice intruders in the school building after hours can be useful in deterring vandalism.

Community service organizations may be willing to print student handbooks, produce posters, provide speakers and films, and otherwise help with the incidental activities of implementing a discipline program. It is also worth asking professional groups to provide legal advice, psychological and medical guidelines, and other professional services that the program may require.

Publicity through local newspapers, radio, and television can be very helpful, especially if it arouses community support. As one side effect, the publicity will help students to understand that what they do in school is important to others.

RECOMMENDATIONS

1. Consider school discipline from the broadest possible perspective, including if possible all of the elements mentioned in this section. If your school lacks a comprehensive discipline policy, something more than merely a set of rules, begin the process of formulating one. The task may require several weeks or months.
2. To help in the process of making or reviewing policy, form committees of teachers, students, parents, and perhaps local residents. These groups should be truly representative.
3. Produce and distribute a student handbook that describes the discipline

program and includes a code of rules. Because it is for permanent reference, the handbook should be professionally printed and bound, not run off on the office duplicating machine. Expect to revise the handbook from time to time as circumstances change.

4. Arrange for teacher education programs that address disciplinary issues and methods. Try to provide a variety of approaches, particularly in classroom management, and ensure that all teachers participate.
5. Involve existing parent groups in issues of school discipline. If the groups already available are disinclined to participate, consider forming a new one for the purpose. The parent committee suggested in Recommendation (2) above might serve as a nucleus.
6. Establish and maintain liaison with police, local residents, newspapers and electronic media, and community groups as described above.

1.2 ASSERTIVE DISCIPLINE

SUMMARY

When teachers know in advance how they are going to deal with misbehavior, and when students know what to expect when they misbehave, disruptive behavior is likely to decrease. A variety of schoolwide discipline approaches that incorporate this principle are available. Assertive discipline, a technique that has received widespread attention recently, is discussed here as one example of a consistent approach to disciplining students. (See the references for others.) Part of a school's overall discipline program, assertive discipline is a set of preventive discipline techniques that forestall disruptive behavior in the classroom so as to maintain an effective learning atmosphere.

BACKGROUND

Studies show that children in the typical classroom spend less than half of their time "on task." In consequence, the school day is cut effectively in half. Some of the wasted time is spent in disruptive behavior, most often talking to other children or wandering around the room. The teacher devotes a disproportionate share of time and attention to the disorderly minority, at the expense of other students.

GOALS OF ASSERTIVE DISCIPLINE

1. To increase students' time on task
2. To minimize distracting and disruptive behavior
3. To reduce the likelihood of more serious disciplinary problems
4. To minimize the teacher's effort in maintaining discipline
5. To achieve these goals with the least possible use of serious punishment.

PRINCIPLES OF ASSERTIVE DISCIPLINE

1. All students must know which behaviors are forbidden.
2. Students must know that repeated misbehaviors will result in a fixed sequence of increasingly unpleasant responses from the teacher.
3. Because teacher response is highly predictable, students discover early that misbehavior never pays off.
4. Rather than invoke the later, more serious responses that are certain to

follow, students come to cease their misbehaviors at the very start of the sequence.

WHAT RULES ARE APPROPRIATE?

Rules should be few in number, and the students should have a part in establishing them. The rules should focus at first on misbehaviors that distract the class most often--perhaps talking, leaving one's seat, passing notes, etc. But the teacher should set only rules that he or she is prepared to enforce every time, without exception.

WHEN A CHILD MISBEHAVES

Teacher response must be immediate. Waiting in hopes that the misbehavior will stop by itself only encourages it to continue.

The sequence of responses should always be the same. It should begin with responses that will be easy for the teacher to use later on, once the pattern is established, as the primary method of keeping order. For example:

1. Look the child silently in the eye.
2. Say the child's name once, firmly.
3. Move to the child's desk; stare him or her in the eye without speaking.
4. Bend down to the child's level, eyeball to eyeball.
5. Using a quiet, insistent voice, order the child back to work in just one or two words. Remain in position until the child obeys.
6. Stand up and move back a bit when the child complies, then smile and say, "Thank you," in a sincere tone of voice.

After a short acclimation period, the full sequence will rarely be necessary. Just the initial look in the eye will usually be enough.

WHEN A CHILD CONTINUES TO MISBEHAVE

Every student in the class must know that misbehavior can never succeed. Thus, students who do not respond to the methods above will need a further sequence of escalating disciplinary measures. Again, these must be highly predictable; that is, they must be used *every* time they are necessary until the child's behavior improves.

Teachers should understand, however, that chronic disruptive behavior almost always stems from some cause. It may be trouble at home, such as parental illness or separation, or it may be that the child feels the classroom rules are unfair. Whatever the reason, understanding it will help the teacher to improve the child's behavior.

The following disciplinary sequence has proved itself in practice:

1. Warn the child during class that further disruption will not be tolerated; write his or her name on the chalkboard to show the child you are serious and not likely to forget the misbehavior.
2. Confer with the child in private, on the child's own time (recess, lunch, or after school); explain why improved behavior is essential; attempt to determine reasons for the ongoing disruption.
3. Take away a privilege briefly (such as leaving the room at recess) or tell the child that further misbehavior will require a conference with the parents.
4. Send the child to the principal, or remove him or her from the classroom for a short time in some other way.
5. Use one or more of the following measures, chosen in light of any underlying problems:
   - Arrange for counseling
   - Confer with the parents
   - Take away all privileges (free time at lunch, recess, special activities, etc.) for three to five days
   - Remove the disruptive student from the classroom via in-school suspension
   - As a last resort, suspend the student from school (see section 2.2).

Again, break the sequence and resume friendly relations as soon as the child's behavior improves.

REMARKS

1. Despite the need for consistency, departures from these sequences will occasionally be justified. Reasonable flexibility in response to particular children's needs will not impair the program.
2. The teacher's actions should clearly reflect rejection only of the disruptive behavior, *never* of the child. Ideally the teacher will convey that he or she wants the behavior to improve out of liking and respect for the child.

FOR MORE INFORMATION

The techniques of assertive discipline are discussed at greater length in "The Gentle Art of Classroom Discipline," by Frederic H. Jones, and "Taking Charge of Student Behavior," by Lee Canter, both in *Principal* 58 (June 1979): 26-36, 41. See also *Assertive*

Assertive Discipline--1.12

Discipline: A Take Charge Approach for Today's Educator, by Lee and Marlene Canter (Los Angeles: Canter and Associates, 1979.)

1.3 IN-SCHOOL SUSPENSION

SUMMARY

In-school suspension is often a useful disciplinary alternative to exclusion from school via suspension or expulsion. Compared with full suspension, its advantages include uninterrupted provision of educational and social benefits to the student and less stringent due process requirements for school officials.

ESSENTIALS OF IN-SCHOOL SUSPENSION

In-school suspension is a mechanism for isolating disruptive students in a supervised environment that requires behavioral change and encourages attention to schoolwork. The suspension can range from a few class periods to several days, though it most typically extends for about three to five days. Physical arrangements depend largely on how long the isolation is expected to last. The following arrangements have been successful in practice:

1. For a few hours' isolation, almost any supervised location where traffic is light will do. A quiet corner in the school office, furnished with a desk and chair, is one option. Some schools maintain a special "time-out room" staffed by a teacher aide.
2. Isolations for a day or more generally require a special facility. Most commonly used is a "suspension room" supervised by a teacher or a teacher aide.
3. Some schools find it practical to maintain a separate building, such as a classroom-equipped trailer. While less convenient for staff and relatively expensive unless the facility is already available, this arrangement helps to minimize the contact between suspended students and others.

Most advocates of in-school suspension recommend the greatest degree of isolation possible without inconvenience to staff and other students. Thus it is common practice to exclude suspended students from assemblies and extracurricular activities and to have them eat lunch apart from other students.

Students can be committed to in-school suspension for a predetermined period of time. Alternatively, their return to the regular classroom may be conditioned on completing particular tasks, such as academic assignments, or on noticeable improvements in attitude and

behavior.

WHEN TO CONSIDER IN-SCHOOL SUSPENSION

Many school districts use in-school suspension when the student's offense is relatively minor, not involving injury to persons or damage to property. In-school suspension, rather than full suspension or expulsion, may be especially useful for offenses such as truancy and class-cutting, as full suspension in these cases would merely "reward" the student with the same absence from school that the student sought illegitimately.

ADVANTAGES OF IN-SCHOOL SUSPENSION

Proponents of in-school suspension argue the following benefits in contrast with exclusion from the school:

1. The student's education continues with little or no interruption. Due to the relative lack of distraction and the increased task concentration of in-school suspension, many students make better academic progress over the few days of isolation than they would in the regular classroom during the same period. By comparison, removal from school nearly always exacerbates any existing academic problems.
2. The isolation allows for closer observation of the student than might otherwise be possible. The observation can help to identify students who need special attention such as tutoring or psychological counseling.
3. Once students who need special help have been so identified, the isolated environment offers a good occasion to begin tutoring or counseling.
4. When the student's return to the regular classroom is conditional on the completion of certain assignments, the promised "reward" of rejoining friends is often a strong motivating factor.
5. Parents may be more supportive of in-school suspension than of exclusion from school because they need not worry about the child's activities in the street or elsewhere. The social stigma is also reduced.
6. Suspension from school for even a few days requires certain due process procedures. (See section 2.2.) Though the courts have not yet ruled on the question, it seems likely that in-school suspension will not be subject to the same requirements.
7. With the most disruptive students out of the classroom, other students have a better environment in which to work.

RECOMMENDATIONS

1. Examine the physical plant to see whether an isolated suspension room is

practical. If possible, the room should be located away from parts of the building most usually frequented by students.

2. Determine whether staffing needs and resources can permit a teacher to supervise the suspension room, or whether an aide can be hired or reassigned. It is most important that the suspension room *never* be left unsupervised.
3. Consider in-school suspension for those offenses that might justify suspension or expulsion but are not so serious as to suggest that the student poses a danger to persons or property. The suspension room should not, however, become a "dumping ground" for students who are merely troublesome in the regular classroom. In-school suspension can never be an effective substitute for ordinary classroom management.
4. In-school suspensions (beyond "time-outs" lasting only a few hours) deserve some of the formalities that ordinarily attend suspension and expulsion. Assignments to the suspension room should involve the principal or assistant principal, in addition to the classroom teacher. The student will better appreciate the gravity of the offense if he or she understands that in-school suspension is a last resort before suspension or expulsion.
5. Minimal due process--such as notice to the student of the offense and a "corridor conference" to hear the student's side of the story--is strongly recommended, though not yet required by the courts.
6. Notify parents promptly in writing when a student is assigned to in-school suspension. The notice should specify the offense and should explain the sanction as an alternative to full suspension or expulsion. If the student's release from in-school suspension requires some action or change of behavior on the student's part, that information should also be part of the notice.
7. When possible, schedule a conference with the parents and student before the student returns to class.
8. Before instituting in-school suspension, be sure that teachers understand its advantages and the extra work it may involve. For example, it is important that the classroom teacher supervise the student's academic work while he or she is outside the regular program. Ideally, the classroom teacher will work closely with the teacher or aide in charge of the suspension room. The classroom teacher should draw up daily assignments, receive the completed work regularly, and recommend tutoring as appropriate. Students are entitled to full credit for work completed during the suspension.
9. If the student's behavior suggests that psychological counseling may be appropriate, it should begin during the suspension, if possible.
10. Consider adopting "behavior contracts" as part of the in-school suspension

procedure. In such contracts, the student typically agrees to make certain improvements in behavior or academic work as a condition for return to the regular classroom. The contract should also specify the sanctions to be applied if the student fails to meet the goals or repeats the offense. It is usually best to draw up the contract in a meeting that includes the principal, classroom teacher, parents, and student. A contract imposed on the student with no option but to sign is not likely to be effective.

1.4 WHEN RIGHTS CONFLICT

SUMMARY

Schools may not restrict student activities that are protected by the first amendment--that is, exercises of religious belief, freedom of speech, and freedom of the press.

EXCEPTIONS

Schools *may* regulate activities that would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.

BACKGROUND

"Students in school as well as out of school are 'persons' under our Constitution," ruled the U.S. Supreme Court in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). With that sentence, the Court applied the first amendment to students and thus made it unconstitutional for school officials to discipline students for protected activities. (The fourteenth amendment extends the first amendment to the states, and so to agencies that derive their authority from the states, including local public schools.)

LIMITED ROLE OF THE COURTS

The courts have repeatedly expressed their reluctance to interfere in the operation of schools. Said the U.S. Supreme Court in *Wood v. Strickland*, 420 U.S. 308, 326 (1975): "It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion." The lower courts echo this view. Nevertheless, the courts do not hesitate to intervene when they see a genuine threat to constitutional values. School administrators who respect students' constitutional rights rarely have their decisions overturned in court. But legal and practical problems do arise when the first amendment stands in the way of maintaining order in the schools.

FREEDOM OF EXPRESSION

Students have a constitutional right to free speech in school. In *Tinker*, cited above, the U.S. Supreme Court sided with students who had been suspended for wearing black armbands to protest the Vietnam war, in violation of school policy. Lower courts have since

interpreted *Tinker* as entitling students to a wide range of free expression.

But the court in *Tinker* also gave school officials the right to forbid conduct that would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."

The burden of proof is on school officials to show that the forbidden activity would disrupt the school. School officials may not forbid activities simply because they disagree with them, or because the activities run counter to prevailing local norms.

HAIR AND DRESS

The federal courts of appeal are divided on whether a male student's right to free expression includes wearing long hair or facial hair. As a result, the school's geographic location largely determines whether its officials can regulate long hair and beards.

Anywhere, however, school officials can regulate hair length if they have a "rational basis" for doing so. One leading case, *Stull v. School Board of the Western Beaver Junior-Senior High School*, 459 F.2d 339 (3d Cir. 1972), would have allowed schools to ban long hair if it caused disruption, offered a health hazard, or threatened academic accomplishment.

Though a much-litigated issue in the late 1960s and early 1970s, student hair length has not appeared in the published federal court opinions since 1972. Today, a hair regulation without a rational basis might have more trouble surviving judicial scrutiny than when the cases were heard.

Regulation of student dress provides little legal precedent. But rules against clothing that is likely to cause disruption in the school--for example, overly scanty attire or provocative messages on tee shirts or jackets--are apt to stand up in court.

More restrictive dress codes may be unconstitutional. A federal court in New Hampshire found the right to choose one's clothing for school to be guaranteed by the fourteenth amendment, so long as the clothes are neat and clean. *Bannister v. Paradis*, 316 F. Supp. 185 (D.C.N.H. 1970).

RELIGIOUS EXPRESSION

Courts and schools alike have zealously protected students' rights to expression of religious belief. Occasionally, however, a disciplinary issue arises when a student refuses, on religious grounds, to take part in an activity that the school considers very important. In such conflicts, the courts have tended to side with the student. For

SUPPLEMENT

Insert after Page 1.18

FREEDOM OF EXPRESSION

(section continued)

Schools not only must allow students free expression, but may also have to take affirmative steps to protect that expression. A male Rhode Island student, a self-described homosexual, sought to bring a male escort to the senior prom. The principal refused permission, later arguing in court that he feared disruption and possible injury from classmates to the two young men. The court, in a troubled opinion, disagreed. Citing *Tinker*, above, the court held the student's proposed action to be a political statement protected by the first amendment. Through a preliminary injunction, the court required the principal to allow the student his choice of escort, and also to provide enough security to ensure their safety. "The school does have an obligation to take reasonable measures to protect and foster free speech, not to stand helpless before unauthorized student violence." *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980).

example:

- The U.S. Supreme Court has held that a student whose religion forbids it may not be compelled to salute the flag. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).
- A federal court in Arizona overturned a school's disciplinary measures against a student who for religious reasons refused to stand for the national anthem. *Sheldon v. Fannin*, 221 F. Supp. 766 (D.C. Ariz. 1963).

PUBLICATION

Although freedom of the press extends into the schools, school officials have more power to control publications than almost anyone else in society. The test most often applied is that in *Tinker*, cited above: the school may suppress publications that would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.

Note, however, that a school may not suppress a publication merely because the material is vulgar or in bad taste, or expresses views contrary to those prevailing in the community. Rather, the school must show a likelihood of disruption or harm to students.

In a recent case, a New York City high school newspaper wished to distribute a sex questionnaire to students ranging in age down to twelve. School officials forbade the distribution. The federal court of appeals agreed with the school on the basis of expert testimony that the questionnaire would be likely to cause some students severe anxiety. *Trachtman v. Anker*, 563 F.2d 512 (2d Cir. 1977).

On the other hand, in a subsequent case the same court found that the school's authority does not extend to indecent publications produced and distributed by students off campus, even if a minor part of the activity occurs on school property: "[T]he First Amendment forbids public school administrators and teachers from regulating the material to which a child is exposed after he leaves school each afternoon." *Thomas v. Board of Education*, 607 F.2d 1043, 1051 (2d Cir. 1979).

PRIOR RESTRAINT

School officials face even more stringent standards when they seek to restrain publication altogether, rather than suppress the material afterward or punish students for having published it. A majority of the federal appeals courts permit prior restraint, but only if the student-publishers have a means to appeal the restraint very quickly, before the material loses its news value. See *Eisner v. Stamford Board of Education*, 440 F.2d 803 (2d Cir. 1971).

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Other courts, however, hold prior restraint to be unconstitutional in school, just as it is in the rest of society. See, for example, *Fujishima v. Board of Education*, 460 F.2d 1355 (7th Cir. 1972).

A federal court in Nebraska struck down a school regulation requiring prior approval of material to be distributed to "several students," because the likelihood of disruption in the school would be insignificant. But the court would have allowed a regulation that controlled a "substantial distribution" of the material. *Hernandez v. Hanson*, 430 F. Supp. 1154 (D.C. Neb. 1977).

Prior restraint may be allowed where school authorities have reason to believe that the material is libelous, obscene by legal standards, disruptive of school activities, likely to create substantial disorder, or invasive of the rights of others. A federal court in New York used this test to uphold the actions of a high school principal who forbade distribution of a school newspaper that included two letters, one probably libelous and the other likely to incite violence among students. *Frasca v. Andrews*, 463 F. Supp. 1043 (E.D.N.Y. 1979).

RECOMMENDATIONS

1. Whenever it is necessary to limit student expression, including student appearance, there should be a rational basis for the regulation. Possible rational bases include the prevention of disruption or violence in the school; the furthering of educational goals, student health, and safety; and the minimization of threats to students' psychological well-being.

   The limitations on student expression should be the minimum necessary to achieve needed discipline and order in the school.
2. Make every possible effort to accommodate students' religious observations, even at the cost of some administrative inconvenience. Particularly, the school should not require of a student any activity that contravenes his or her religious principles.
3. If it is necessary to place limitations on student publications produced in school, there should be a reason for doing so that ties to discipline and order in the school. It may not be possible to suppress publications simply on the basis of bad taste or unwelcome political views.
4. Attempts to discipline students for their participation in off-campus publications may be subject to legal challenge. It may be possible, however, to keep the material from being distributed on campus if there is reason to believe that its distribution would interfere with needed school discipline.

SUPPLEMENT

Insert after Page 1.20

PUBLICATION

(section continued)

A publication can usually be banned if it poses a threat to student health or safety, even if the threat is an indirect one. In *Williams v. Spencer*, 622 F.2d 1200 (4th Cir. 1980), a Maryland principal was allowed to block in-school distribution of an underground newspaper that carried a "head shop" advertisement for drug paraphernalia. The trial court reasoned that because drug use is harmful, advertisements encouraging drug use are harmful also. The appeals court agreed that the harm was sufficient to outweigh students' first amendment rights, even though there was little likelihood that the publication would result in actual disruption of school activities.

5. Prior restraint of student publications may also be subject to legal challenge. Establish a written policy for prior restraint and promulgate it to student publishers. The policy should specify categories of material subject to prior restraint (legally obscene, libelous, likely to promote violence, etc.) and should also include a mechanism for very prompt appeal, preferably within hours. If the policy requires that student material be submitted routinely for administrative review before its publication, the response time for the review should likewise be very short.

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